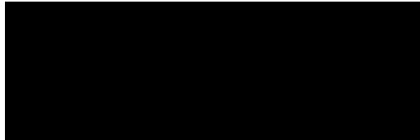




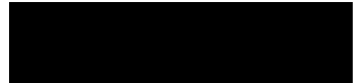
U.S. Citizenship
and Immigration
Services



B5

DATE: DEC 19 2012 Office: NEBRASKA SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, revoked the approval of the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The petitioner describes itself as a computer services business. It sought to permanently employ the beneficiary in the United States as a software engineer. The petitioner requests classification of the beneficiary as a member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The director's decision revoking the petition concludes that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

The United States Citizenship and Immigration Services (USCIS) Administrative Appeals Office (AAO) is in receipt of a Form I-290B, Notice of Appeal and a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, that were filed in relation to a Form I-140 that is now before the AAO on appeal, receipt number [REDACTED]. However, the Form I-290B and Form G-28 were signed by the beneficiary and/or his representative. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) permits an "affected party" to "be represented by an attorney or representative" but specifically states that the affected party "does not include the beneficiary of a visa petition."

The AAO submitted a request to counsel dated November 1, 2012, for a new Form G-28 signed by the petitioner and the petitioner's attorney on behalf of the petitioner as required by 8 C.F.R. § 292.4(a); 75 Fed. Reg. 5225 (Feb. 2, 2010). In response to the AAO request, counsel resubmitted a copy of a Form G-28 signed by the beneficiary and indicated that the beneficiary was a "self-petitioner/appellant." However, the Form G-28 that counsel provided was not signed by the petitioner, the only "affected party" in this proceeding. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. There is no regulatory provision that would allow USCIS to recognize the appearance of an attorney or accredited representative who does not represent the "affected party" or to consider a brief that was provided by someone who does not represent the "affected party." There is no evidence in the record to demonstrate that the petitioner consented to filing the appeal. Therefore, the appeal will be rejected.

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The appeal is rejected.